

REMARKS

This is a full and timely response to the non-final Official Action mailed December 10, 2010 (the "Office Action" or "Action"). Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Claim Status:

By the preceding amendment, claims 1, 2, 5, and 12-18 have been amended. Additionally, claims 21-25 have been cancelled without prejudice or disclaimer. Thus, claims 1-20 are currently pending for further action.

Claim Objections:

In the outstanding Office Action, the Examiner objected to claims 5, 12, and 14-17 due to a number of noted minor informalities. While Applicant does not necessarily agree with any particular issue raised by the Action, the claims have been amended to address all the outstanding issues. Following entry of this amendment, all the remaining claims are believed to be beyond objection.

Rejections under 35 U.S.C. §112, second paragraph:

In the recent Office Action, claim 24 was rejected under 35 U.S.C. § 112, second paragraph. This claim has been carefully reviewed in light of the Examiner's comments.

While Applicant does not necessarily agree that claim 24 was indefinite as filed, the indicated claim has been amended herein to address the issues raised by the Examiner under 35 U.S.C. § 112, second paragraph. Following this amendment, all the remaining claims are

believed to be in compliance with 35 U.S.C. § 112 and notice to that effect is respectfully requested.

Rejections under 35 U.S.C. §102(e):

1. In the recent Office Action, claims 1, 2, and 21 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,742,141 to Miller (“Miller”). For at least the following reasons, this rejection should be reconsidered and withdrawn.

Claim 1:

Claim 1 now recites:

A method of obtaining technical support for a data-processing device, comprising initiating a support session during which device-specific data is conveyed from the device to a support provider system to assist the support provider in responding to a support query, and polling the support provider’s system with a polling application to determine whether the support provider has indicated a response to the query has been made available, on a repeated and automated basis, until a response becomes available or the support session is terminated, ***in which a response flag is added to the support provider’s system when a response becomes available and in which the flag is detected by the polling application which notifies a user of the data-processing device that the response has become available.***

(Emphasis added).

Support for the amendment to claim 1 can be found in Applicant’s originally filed specification at, for example, page 7, lines 13-18 and page 7, line 28 – page 8, line 11 as well as claim 21, the subject matter of which has been incorporated into claim 1.

In contrast, Miller does not teach or suggest:

[a] method of obtaining technical support . . . in which a response flag is added to the support provider’s system when a response becomes available and in which the flag is detected by the polling application which notifies a user of the data-processing device that the response has become available.

(Claim 1).

In rejection claim 21, the Office Action has asserted that “Miller teaches wherein a response flag is added to the support provider's system when a response becomes available and wherein the flag is detected by the polling application (see Fig. 19 and col. 5 lines 35-44 and col. 18 lines 58-67).” (Action, p. 4). This is incorrect and the Office is reading into Miller subject matter that simply does not exist. Indeed, Miller merely teaches that “[t]he customer site software periodically checks the status of the problem escalation” whereupon if a resolution is found, it is “*coded into the master knowledge base*, [in which at] step 394 [the customer site software] update[s] the customer knowledge base from the master knowledge base.” (Miller, col. 5, ll. 39-42; col. 18, ll. 64-67). Nowhere, does Miller teach or suggest that “a response flag is added to the support provider’s system.” (Claim 1).

Additionally, the Office Action has conceded that “Miller does not teach notifying the user that the response has become available.” (Action, p. 8). However, in order to overcome this deficiency, the Office Action asserts that because “Miller provides the capability for the support provider system to notify the customer of the automatic server interaction,” that “it would have been obvious to one of ordinary skill in the art at the time [of] the invention was made, to have included the step of notifying the user of the available solution so that the customer can obtain the solution as soon as possible without checking continuously (see Fig. 19 step 393 and col. 18 lines 59-67).” (*Id.*). However, as shown above, Miller merely teaches that “[o]nce the problem has been solved and coded into the master knowledge base, step 394 retrieves the solution by updating the customer knowledge base from the master knowledge base.” (Miller, col. 18, ll. 64-67). Therefore, contrary to what has been asserted by the Office, Miller only teaches that when a solution is found, the customer site software updates the customer knowledge base, and does not teach that the operator is informed at all.

Respectfully, to anticipate a claim, a reference must teach each and every element of the claim, and “the identical invention must be shown *in as complete detail as contained in the ... claim.*” MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989) (emphasis added). Moreover, “[t]he prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *NetMoneyIn v. Verisign*, (Fed. Cir. 2008) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983)).

In the present case, Miller clearly does not disclose the claimed invention with each and every claimed element in the same amount of detail or as arranged in the claim. Consequently, because Miller clearly fails to satisfy the requirements for anticipating claim 1, the rejection of claim 1 and its dependent claims should be reconsidered and withdrawn.

Rejections under 35 U.S.C. §103(a):

1. In the recent Office Action, claims 3-7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of U.S. Patent Application Publication No. 2002/0198834 to Kramer et al. (“Kramer”). The rejection of claims 3-7 should be reconsidered and withdrawn for at least the same reasons given above in favor of the patentability of independent claim 1.

2. In the recent Office Action, claims 8, 9, and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of U.S. Patent No. 6,145,096 to Bereiter

(“Bereiter”). The rejection of claims 8, 9, and 12 should be reconsidered and withdrawn for at least the same reasons given above in favor of the patentability of independent claim 1.

3. In the recent Office Action, claims 10, 11, 13-18, 20, and 22-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller and Bereiter in view of Pawlan et al (Pub article 'Signed Applets, Browsers, and File Access' April-1998, pp 1-5; (“Pawlan”). For at least the following reasons, this rejection should be reconsidered and withdrawn.

Claim 13:

Claim 13 now recites:

A method of providing asynchronous web-based active technical support from a support provider to a user of an electronic device during a support session, the method comprising receiving device-specific data to assist the support provider in responding to a support query, dispatching a polling application operative to poll the support provider's system in order to determine whether a response, ***indicated by a flag associated with the support provider's uniform resource locator***, has been made available and ***notifying the user that the response has become available***, the polling application being dispatched, from or on behalf of the support provider, in response to an instruction generated using a trusted applet.

(Emphasis added).

Support for the amendment to claim 13 can be found in Applicant's originally filed specification at, for example, page 7, lines 13-18 and page 7, line 28 – page 8, line 11 as well as claim 22, the subject matter of which has been incorporated into claim 13.

In contrast, the cited references in any combination do not teach or suggest method of providing technical support “the method comprising . . . polling application operative to poll the support provider's system in order to determine whether a response, indicated by a flag associated with the support provider's uniform resource locator, has been made available and

notifying the user that the response has become available.” (Claim 13). The Office Action has asserted that “claims 22-25 are in the same context as claim 21 [and are] therefore are rejected under similar rationale.” (Action, p. 11). Therefore, much like the argument presented above in connection with claim 1, Miller merely teaches that “[t]he customer site software periodically checks the status of the problem escalation” whereupon if a resolution is found, it is “*coded into the master knowledge base*, [in which at] step 394 [the customer site software] update[s] the customer knowledge base from the master knowledge base.” (Miller, col. 5, ll. 39-42; col. 18, ll. 64-67). Nowhere, does Miller teach or suggest that when determining whether a response has been provided by the support provider that “a flag [is] associated with the support provider’s uniform resource locator.” (Claim 13). Indeed, not only does Miller not teach or suggest that a response is indicated by a flag on the support provider’s system, Miller also does not teach or suggest that the flag is associated with the support provider’s uniform resource locator.

Still further, the Office Action has conceded that “Miller does not teach notifying the user that the response has become available.” (Action, p. 8). The Office Action asserts that, despite this deficiency, this is still taught in Miller because “Miller provides the capability for the support provider system to notify the customer.” (Action, p. 8). As detailed above in the arguments presented above for claim 1, Miller only teaches that when a solution is found, the customer site software updates the customer knowledge base, and does not teach that the operator is notified at all. (*See* Miller, col. 18, ll. 64-67).

The Supreme Court recently addressed the issue of obviousness in *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007). The Court stated that the *Graham v. John Deere Co. of Kansas City*, 383, U.S. 1 (1966), factors still control an obviousness inquiry. Under the analysis required by *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), to support

a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue in view of the ordinary skill in the art. In the present case, the scope and content of the cited references did not include the claimed subject matter, particularly a method of providing asynchronous web-based active technical support from a support provider to a user of an electronic device during a support session, the method comprising dispatching a polling application operative to poll the support provider's system in order to determine whether a response, indicated by a flag associated with the support provider's uniform resource locator, has been made available and notifying the user that the response has become available.

The differences between the cited references and claim 13 are significant because claim 13 provides for a quick response time and remedying of the user's electronic device. Thus, the claimed subject matter provides features and advantages not known or available in the cited references. Consequently, the cited references will not support a rejection of claim 13 under 35 U.S.C. § 103 and *Graham*. Therefore, for at least the reasons explained here, the rejection based on Miller, Bereiter, and Pawlan of claim 13 should be reconsidered and withdrawn.

Claim 14:

Claim 14 now recites:

A server-side technical support source comprising a web server to participate in asynchronous messaging with a client-side device, the support source being operative to supply, to the device, a polling application whereby repeated polling of the support source is effected in order to determine if a response, ***indicated by a flag associated with the support source***, has been provided by the support source ***and notify a user of the device when the response has been provided***, the polling application being supplied to the device using a trusted applet.

(Emphasis added).

Support for the amendments to claim 14 can be found in Applicant's originally filed specification at, for example, page 7, lines 13-18 and page 7, line 28 – page 8, line 11 as well as claim 23, the subject matter of which has been incorporated into claim 14.

In contrast, the cited references in any combination do not teach or suggest “[a] server-side technical support source comprising . . . a polling application . . . [which] determine[s] if a response, indicated by a flag associated with the support source, has been provided by the support source and notif[ies] a user of the device when the response has been provided.” (Claim 14). Again, the Office Action has asserted that “claims 22-25 are in the same context as claim 21 [and are] therefore are rejected under similar rationale.” (Action, p. 11). Therefore, much like the argument presented above in connection with claims 1 and 13, Miller merely teaches that “[t]he customer site software periodically checks the status of the problem escalation” whereupon if a resolution is found, it is “*coded into the master knowledge base*, [in which at] step 394 [the customer site software] update[s] the customer knowledge base from the master knowledge base.” (Miller, col. 5, ll. 39-42; col. 18, ll. 64-67). Nowhere, does Miller teach or suggest that when determining whether a response has been provided by the support provider that a *flag* is associated with the support source.” (See Claim 14).

Still further, the Office Action has conceded that “Miller does not teach notifying the user that the response has become available.” (Action, p. 8). The Office Action asserts that, despite this deficiency, this is still taught in Miller because “Miller provides the capability for the support provider system to notify the customer.” (Action, p. 8). As detailed above in the arguments presented above for claim 1, Miller only teaches that when a solution is found, the customer site software updates the customer knowledge base, and does not teach that the operator is notified at all. (See Miller, col. 18, ll. 64-67).

The Supreme Court recently addressed the issue of obviousness in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007). The Court stated that the *Graham v. John Deere Co. of Kansas City*, 383, U.S. 1 (1966), factors still control an obviousness inquiry. Under the analysis required by *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), to support a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue in view of the ordinary skill in the art. In the present case, the scope and content of the cited references did not include the claimed subject matter, particularly a server-side technical support source comprising a polling application which determines if a response, indicated by a flag associated with the support source, has been provided by the support source and notifies a user of the device when the response has been provided.

The differences between the cited references and claim 14 are significant because claim 14 provides for a quick response time and remedying of the user's electronic device. Thus, the claimed subject matter provides features and advantages not known or available in the cited references. Consequently, the cited references will not support a rejection of claim 14 under 35 U.S.C. § 103 and *Graham*. Therefore, for at least the reasons explained here, the rejection based on Miller, Bereiter, and Pawlan of claim 14 should be reconsidered and withdrawn.

Claims 15:

Claim 15 now recites:

A software element stored on memory of a data-processing device for use in the provision of technical support to a user of the data-processing device, the software element being, in response to an indication of trust being given by the user, operative to effect or permit a download of a polling element whereby a support provider is polled, on a repeated and automated basis, in order to determine if a response, ***indicated by a flag associated with the support provider, has been provided and notify the user when the response has been provided.***

(Emphasis added).

Support for the amendments to claim 15 can be found in Applicant's originally filed specification at, for example, page 7, lines 13-18 and page 7, line 28 – page 8, line 11 as well as claim 24, the subject matter of which has been incorporated into claim 15.

Much like the arguments presented above in connection with claims 1, 13 and 14 above, the cited references, in any combination, do not teach or suggest “[a] software element [which downloads a polling element that] determines if a response, indicated by a flag associated with the support provider, has been provided and notify the user when the response has been provide.” (Claim 15).

Contrary to what the Office Action has asserted, Miller merely teaches that “[t]he customer site software periodically checks the status of the problem escalation” whereupon if a resolution is found, it is “***coded into the master knowledge base***, [in which at] step 394 [the customer site software] update[s] the customer knowledge base from the master knowledge base.” (Miller, col. 5, ll. 39-42; col. 18, ll. 64-67). Nowhere, does Miller teach or suggest that the determination of whether a response exists is “indicated by a ***flag*** associated with the support provider.” (Claim 15) (emphasis added).

Still further, the Office Action has conceded that “Miller does not teach notifying the user that the response has become available.” (Action, p. 8). The Office Action asserts that,

despite this deficiency, this is still taught in Miller because “Miller provides the capability for the support provider system to notify the customer.” (Action, p. 8). As detailed above in the arguments presented above for claim 1, Miller only teaches that when a solution is found, the customer site software updates the customer knowledge base, and does not teach that the operator is notified at all. (See Miller, col. 18, ll. 64-67).

The Supreme Court recently addressed the issue of obviousness in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007). The Court stated that the *Graham v. John Deere Co. of Kansas City*, 383, U.S. 1 (1966), factors still control an obviousness inquiry. Under the analysis required by *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), to support a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue in view of the ordinary skill in the art. In the present case, the scope and content of the cited references did not include the claimed subject matter, particularly a software element which downloads a polling element that determines if a response, indicated by a flag associated with the support provider, has been provided and notify the user when the response has been provide.

The differences between the cited references and claim 15 are significant because claim 15 provides for a quick response time and remedying of the user's electronic device. Thus, the claimed subject matter provides features and advantages not known or available in the cited references. Consequently, the cited references will not support a rejection of claim 15 under 35 U.S.C. § 103 and *Graham*. Therefore, for at least the reasons explained here, the rejection based on Miller, Bereiter, and Pawlan of claim 15 should be reconsidered and withdrawn.

Claim 18:

Claim 18 now recites:

A method of obtaining technical support for a data-processing device, comprising:

establishing a support session using a web connection during which device-specific data is conveyed from the device to a support provider to assist the support provider in responding to a support query;

downloading a polling application from the support provider using a trusted applet and polling, using the polling application, the support provider's system for a response to the query, on a repeated and automated basis, in order to determine if a response, ***indicated by a flag associated with the support provider***, has become available or until the support session is terminated.

(Emphasis added).

Support for the amendments to claim 18 can be found in Applicant's originally filed specification at, for example, page 7, lines 13-18 and page 7, line 28 – page 8, line 11 as well as claim 25, the subject matter of which has been incorporated into claim 18.

Much like the arguments presented above in connection with claims 1, 13, 14, and 15 the cited references, in any combination, fail to teach or suggest that “a response [being available is] indicated by a flag associated with the support provider.” (Claim 18). Again, the Office Action has asserted that “claims 22-25 are in the same context as claim 21 [and are] therefore are rejected under similar rationale.” (Action, p. 11). However, Miller merely teaches that “[t]he customer site software periodically checks the status of the problem escalation” whereupon if a resolution is found, it is “***coded into the master knowledge base***, [in which at] step 394 [the customer site software] update[s] the customer knowledge base from the master knowledge base.” (Miller, col. 5, ll. 39-42; col. 18, ll. 64-67). Nowhere, does Miller teach or suggest that when determining whether a response has been provided by the support provider that “a flag [is] associated with the support provider.” (Claim 18).

The Supreme Court recently addressed the issue of obviousness in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007). The Court stated that the *Graham v. John Deere Co. of*

Kansas City, 383, U.S. 1 (1966), factors still control an obviousness inquiry. Under the analysis required by *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), to support a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue in view of the ordinary skill in the art. In the present case, the scope and content of the cited references did not include the claimed subject matter, particularly a method of obtaining technical support for a data-processing device, comprising a polling application which queries a support provider in order to determine if a r flag associated with the support provider is present thereby indicating that a response has become available.

The differences between the cited references and claim 18 are significant because claim 18 provides for a quick response time and remedying of the user's electronic device. Thus, the claimed subject matter provides features and advantages not known or available in the cited references. Consequently, the cited references will not support a rejection of claim 18 under 35 U.S.C. § 103 and *Graham*. Therefore, for at least the reasons explained here, the rejection based on Miller, Bereiter, and Pawlan of claim 18 and its dependent claims should be reconsidered and withdrawn.

Conclusion:

In view of the preceding arguments, all claims are believed to be in condition for allowance over the prior art of record. Therefore, this response is believed to be a complete response to the Office Action. However, Applicant reserves the right to set forth further arguments in future papers supporting the patentability of any of the claims, including the separate patentability of the dependent claims not explicitly addressed herein. In addition,

because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed.

The absence of a reply to a specific rejection, issue, or comment in the Office Action does not signify agreement with or concession of that rejection, issue or comment. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

If the Examiner has any comments or suggestions which could place this application in better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

DATE: March 9, 2011

/Steven L. Nichols/
Steven L. Nichols
Registration No. 40,326

STEVEN L. NICHOLS
Director, Intellectual Property Practice Group
VANCOTT PC
36 SOUTH STATE STREET, SUITE 1900
SALT LAKE CITY, UT 84111
P 801.237.0251
M 801.414.0750
F 801.237.0853
E snichols@vancott.com